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REMARKS

Claims 1 – 15 remain in the application and stand rejected. The rejection is respectfully traversed.

Claims 1 – 6 and 8 – 15 are rejected under 35 U.S.C. §103(a) over published U.S. Patent Application No. 2002/0004824 to Cuan et al. in view of U.S. Patent No. 6,377,950 to Peters et al. in further combination with newly cited published U.S. Patent Application No. 2003/0023612 to Zhao et al. Claims 7 – 9 are rejected under 35 U.S.C. §103(a) over the combination of Cuan et al., Peters et al. and Zhao et al. in further view of published U.S. Patent Application No. 2002/0102524 to Rizzi et al. The rejection is respectfully traversed.

Essentially repeating the prior two rejections, it is asserted that Cuan et al., more or less, teaches the invention as recited in claims 1 – 6 and 8 – 15, substantially as described in the previous two Office actions (i.e., as Cuan et al. allegedly anticipating claims 1 – 6 in the first Office action; and in the second Office action, the applicants having successfully overcome alleged anticipation, in an allegedly obvious combination of Cuan et al. with Peters et al. to allegedly result in claims 1 – 6 and 8 – 15). This Office action provides no specific indication regarding the teaching of Peters et al. being relied upon. Accordingly, it is believed that Peters et al. is relied upon again because: as the applicants pointed out, Cuan et al. fails to teach a tuple data structure; and it is implicitly being reasserted that Peters et al. shows that a tuple data structure "is well known in the art and would have been an obvious modification of the system disclosed by Cuan et al., as evidenced by Peters" et al. This Office action also acknowledges that even the combination of Cuan et al. with Peters et al. falls short of resulting in the present invention, which was asserted in the prior Office action. Specifically, this Office action notes that the combination of Cuan et al. and Peters et al. fails to show "monitoring incoming messages. Nonetheless, this feature is well known in the art and would have

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been an obvious modification of the system disclosed by Cuan and Peters, as evidenced by Zhao et al." Thus, Zhao et al., which was filed subsequent to the present application, but relies upon a provisional application filing date that is less than five (5) months prior to the present application, is relied upon to show what was well known at the time this invention was made.

Specifically, Zhao et al. is being relied upon to show what "would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains" as required by 35 U.S.C. §103(a) and, therefore, would have been an obvious modification of Cuan et al. and Peters et al. "In determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious." MPEP §2141.02(I), (citations omitted, emphasis original). "Distilling an invention down to the 'gist' or 'thrust' of an invention disregards the requirement of analyzing the subject matter 'as a whole.'" *Id*, §2141.02(II), (citations omitted). Applicants assert that this piecemeal rejection of the claims, first over Cuan et al., then over Cuan et al. and Peters et al., and more recently over Cuan et al., Peters et al., and Zhao et al. is just what MPEP §2141.02(II) proscribes, i.e., distilling the present invention down to the gist or thrust in each subsequent rejection. The applicants believe that claims 1 – 6 and 8 – 15, as a whole, are not suggested by nor made obvious by any reference of record and further, that an adequate showing of a suggestion as a whole has not been made.

Furthermore, as the applicants have twice noted, the Cuan et al. "development server 230 may ... include tuple code 242 for storing and transferring data in a tuple format. Tuple code may be a software application configured to deploy data." Paragraph 0048. Nowhere else does Cuan et al. use the word "tuple," which may be found only in paragraph 0048. Thus, the recitation of tuple code in Cuan et al. must be taken to mean "a software application configured to deploy data." Further, the Cuan et al. "staging

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application 244 can configure the template code and tuple code for displaying data on a website in a given template format." *Id.* This does not teach or suggest: "a tuplespace data structure that identifies one or more server computers," as claim 1 recites. Neither does Cuan et al. teach "a tuplespace data structure that identifies ... a geographic location for each server computer," as claim 1 recites. Nor is this taught by either Peters et al. or Zhao et al.

Similarly, regarding the reassertion that Cuan et al. paragraphs 0048 – 51 teaches storing "a service request corresponding to the service in the tuplespace data structure along with the geographic location of the requester server computer and one or more destination server computer...," that is not what Cuan et al. teaches. As noted hereinabove, Cuan et al. paragraph 0048, which includes the only mention of "tuple" in Cuan et al., teaches "tuple code 242 for storing and transferring data in a tuple format. Tuple code may be a software application configured to deploy data." Cuan et al. paragraph 0049, essentially, teaches a "production web server 304 [communicating] with production servers 312-316 which communicate with network 308." Cuan et al. paragraph 0050 teaches transmission of content in one direction and feedback in the other. So, content is transmitted "from the development web server 302 to the ultimate web production servers 312-316 [which] be monitored and documented so that transactions and executed scripts can be analyzed." *Id.* In the other direction, "[f]eedback information can be deployed in the feedback direction 320 so that an entity within the data path can analyze the entire deployment process as it occurs." *Id.*

Clearly, none of this describes "an extranet monitor ... [determining] a service required by the message, stores a service request corresponding to the service in the tuplespace data structure along with the geographic location of the requester server computer and ... destination server computers;" and the combination of Cuan et al. with Peters et al. and Zhao et al. does not result in, "a tuplespace data structure that identifies" the computers, a geographic location for each and shared data fields for creating an

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extranet image as claims 1, 8 and 9 recite. Accordingly, Cuan et al. does not teach or suggest the present invention as recited in claims 1, 8 and 9 and neither Peters et al. nor Zhao et al. supplies what is missing from Cuan et al. Therefore, the combination of Cuan et al. with Peters et al. and Zhao et al. does not result in the present invention as recited in claims 1, 8 and 9.

Regarding the assertion that the Cuan et al. "snapshot of a staging area located within development server is established" teaches and "authorized, password-protected shared data fields [are] made available through the network to create an extranet image;" as previously noted, Cuan et al. recites that a "base table may be established in client database 140. The **base table** may be a snapshot of a staging area located within development server 104." Paragraph 0040 (emphasis added). However, the

> staging area 618 [is] configured to integrate and combine content received from possibly multiple development web servers and producing a final web page that includes the integration of the entire content. This is very useful for systems that allow multiple users from different development web servers to work on one web page that is displayed at a production server. The staging area 618 may include content 620, 622 received from various development entities, or different development web servers, that may be integrated into a final web page. The integrated content 625 may be stored by the integration application code 624, which may include application software for integrating various content received from different development web servers.

Paragraph 0079. None of this identifies "server computers, a geographic location for each server computer, and authorized, password-protected shared data fields made available through the network to create an extranet image;" as claim 1 recites. Neither are Peters et al. or Zhao et al. being cited to show, nor do they show, this shortcoming of Cuan et al.

Moreover, as previously noted, Cuan et al. allows each client to have a snapshot of the staging area and so, multiple different snapshots may be established in multiple Cuan et al. clients for multiple different images. By contrast, for the recited extranet

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monitor, "shared data fields made available through the network" for creating an (i.e., single instantaneous) extranet image. In spite of this clear difference, it is asserted that "[g]iving [sic] the teaching of Zhao a person of ordinary skill in the art would have readily recognized the desirability and the advantage of modifying Cuan and Peters by employing the system of Zhao so to detect changes to a data table are detected in order to automatically update domain topology configuration file." However, first one must decide which data table to monitor. There is no indication in any reference of record as how this decision would be made. Thus, to the contrary, one would not be inclined from the teaching of Zhao to detect changes in the multiple different snapshots established in multiple Cuan et al. clients for multiple different images. Even if one were, the result would still not be the present invention as recited in claims 1 – 6 and 8 – 15.

In finding obviousness "impermissible hindsight must be avoided and the legal conclusion must be reached on the basis of the facts gleaned from the prior art." *MPEP* §2142 (emphasis added). "To support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references." *Ex parte Clapp*, 227 USPQ 972, 973 (Bd. Pat. App. & Inter. 1985). An obviousness rejection cannot be based on the resort to various references and the combination of bits and pieces of the references in the light of Applicants' teachings. An extensive discussion of the criteria to be applied in obviousness rulings is set forth in *Aqua-Aerobic Systems Inc. v. Richards of Rockford Inc.*, 1 U.S.P.Q. 2d 1945, 1955-57 (N.D. Ill. 1986). "The fact that a prior art reference can be modified to show the patented invention does not make the modification obvious unless the prior art reference **suggests the desirability** of the modification. An attempted modification of a prior art reference that is unwarranted by the disclosure of that reference is improper." *In re Gordon*, 733 F.2d 900, 902, 221 U.S.P.Q. 1125, 1127 (Fed. Cir. 1984) (emphasis added). *See also, In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed.

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Cir. 1990) (Although a prior art device "may be capable of being modified to run the way the apparatus is claimed, there must be a suggestion or motivation in the reference to do so." 916 F.2d at 682, 16 USPQ2d at 1432.).

Clearly, it is further apparent that each of Peters et al. and Zhao et al. are being applied based on the teaching of the present application in improper hindsight to suggest combining and as a motivation to combine. It seems to the applicants that a straightforward combination of Cuan et al. with Peters et al. and Zhao et al. is a Cuan et al. "method and apparatus for efficient[ly] deploy[ing] data to disparate devices or systems... that may be located in remote locations" (paragraph 0018); with a "development server 230" that may include "a software application configured to deploy data" (*supra*); that allows each client to have a snapshot of the staging area and so, multiple different snapshots may be established in multiple Cuan et al. clients for multiple different images; and something (the Cuan et al. clients?) monitoring something (local snapshots?) as taught by Zhao et al. However, this is not what the present application teaches or the claims recite.

Accordingly, because the assembled references upon which the rejection is based are the result of distilling the present invention down to the gist or thrust in each subsequent rejection; because the present application is being used in improper hindsight for a suggestion to select the references to combine, to suggest combining the references and to teach how to combine; and further, because the allegedly obvious combination does not result in the present invention as recited in claim 1, 8 or 9, the present invention as recited in claims 1, 8 and 9 is non-obvious under 35 U.S.C. §103(a) over the combination of Cuan et al. with Peters et al. and Zhao et al., alone or further in view of any reference of record.

Furthermore, since dependent claims include all of the differences with the references as the claims from which they depend, the combination of Cuan et al. with

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Peters et al. and Zhao et al. does not suggest or result in the present invention as recited in claims 2 – 6, which depend from claim 1. Reconsideration and withdrawal of the rejection of claims 1 – 6 and 8 – 15 under 35 U.S.C. §103(a) over the combination of Cuan et al. with Peters et al. and Zhao et al. is respectfully requested.

Regarding the rejection of claims 7 – 9 over Cuan et al., Peters et al. and Zhao et al. in further combination with Rizzi et al., as previously noted, Rizzi et al. teaches a "content editing system allows developers of instructional materials to edit and design the instructional materials from a database of content." Abstract. Rizzi et al. includes an editor that can edit XML documents, some of which may be educational curriculum. Paragraphs 0024 and 0061. Thus, Rizzi et al does not add anything to the teaching of Cuan et al., Peters et al. or Zhao et al. to result in the present invention as recited in claims 1 – 6, much less claim 7 – 9, which depend therefrom. Reconsideration and withdrawal of the rejection of claim 7 – 9 under 35 U.S.C. §103(a) over the combination of Cuan et al., Peters et al. and Zhao et al. in further combination with Rizzi et al. is respectfully requested.

The applicants thank the Examiner for efforts both past and present in examining the application. Believing the Application in condition for allowance for the reasons set forth above, the applicants request that the Examiner reconsider and withdraw the rejection of claims 1 – 15 under 35 U.S.C. §103(a) and allow the Application to issue.

The applicants note that MPEP §706 "Rejection of Claims," subsection III, "PATENTABLE SUBJECT MATTER DISCLOSED BUT NOT CLAIMED" provides in pertinent part that

> If the examiner is satisfied after the search has been completed that patentable subject matter **has been disclosed** and the record indicates that **the applicant intends to claim** such subject matter, he or she may . note in the Office action that **certain aspects or features** of the patentable invention have not been claimed and that if properly claimed such claims **may be given favorable consideration.** (emphasis added.)

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The applicants believe that the written description of the present application is quite different than and not suggest by any reference of record and that the claims as amended reflect those differences. However, should the Examiner believe anything further may be required, the Examiner is requested to contact the undersigned attorney at the local telephone number listed below for a telephonic or personal interview to discuss any other changes.

Please charge any deficiencies in fees and credit any overpayment of fees to IBM Corporation Deposit Account No. 50-0510 and advise us accordingly.

Respectfully Submitted,

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